

**MINUTES**  
**BIXBY BOARD OF ADJUSTMENT**  
**BIXBY CITY HALL, COUNCIL CHAMBERS**  
**7:00 PM, August 04, 2008**

**STAFF PRESENT:**

Erik Enyart, AICP, City Planner

**ATTENDING:**

See attached Sign-in Sheet

**CALL TO ORDER**

The Board members recalled that Darrell Mullins was the Vice-Chair, or otherwise unanimously appointed him Chair for the meeting by acclamation.

Meeting called to order by Vice/Acting Chair Darrell Mullins at 7:05 PM.

**ROLL CALL**

Members Present: Darrell Mullins, Murray King, Lonnie Jeffries, and Dave Hill.

Members Absent: Jeff Wilson.

**MINUTES**

1. Approval of Minutes for July 07, 2008

Murray King made a MOTION to APPROVE the Minutes of July 07, 2008 as presented by Staff. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, King, Jefferies, & Hill

NAY: None.

ABSTAIN: None.

MOTION CARRIED: 4:0:0

**OLD BUSINESS:**

2. **BBOA-478 – Mike Redmond.** Discussion and possible action to approve (1) a Variance from the Zoning Code to allow a garage accessory structure as a principal use prior to the construction and occupancy of the principal dwelling, (2) a Variance from the 750 square foot accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 2,400 square foot garage accessory structure, and (3) a Variance from Zoning Code Sections 11-7B-3.1.b and 11-8-8.B.5 to allow the accessory building to be constructed in the front yard in the RE Residential Estate District on property with legal description as follows, to-wit:

Property located: Lot 8, Block 6, *Bixby Ranch Estates*; 14238 E. 208<sup>th</sup> St. S.

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Vice/Acting Chair Darrell Mullins introduced the item and called on Erik Enyart for the staff report and recommendation. Mr. Enyart summarized the staff report as follows:

**To:** Bixby Board of Adjustment  
**From:** Erik Enyart, AICP, City Planner  
**Date:** Tuesday, July 29, 2008  
**RE:** Report and Recommendations for:  
BBOA-478 – Mike Redmond

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**LOCATION:** – 14238 E. 208<sup>th</sup> St. S.  
– Lot 8, Block 6, Bixby Ranch Estates  
**LOT SIZE:** Approximately 4+ acres  
**ZONING:** RE Residential Estate District  
**REQUEST:** (1) Variance from the Zoning Code to allow a garage accessory structure as a principal use prior to the construction and occupancy of the principal dwelling, and  
(2) Variance from the 750 square foot accessory building maximum floor area per Zoning Code Section 11-8-8.B.5 to allow a new 2,400 square foot garage accessory structure, and  
(3) Variance from Zoning Code Sections 11-7B-3.1.b and 11-8-8.B.5 to allow the accessory building to be constructed in the front yard, all in the RE Residential Estate District

**SURROUNDING ZONING AND LAND USE:** RE & AG; Rural residential homes and vacant lots in Bixby Ranch Estates, with vacant/wooded land to the east zoned AG in unincorporated Wagoner County.

**COMPREHENSIVE PLAN:** Rural Intensity + Residential Area.

**PREVIOUS/RELATED CASES:**

**RELEVANT AREA CASE HISTORY:**

(includes only accessory building BOA cases in Bixby Ranch Estates)

**BBOA-369 – Lorrie Penrose & Garret Roth** – Request for Special Exception to allow a 3,081 square foot detached garage for storing vintage vehicles for property at 20227 S. 138<sup>th</sup> E. Ave. in Bixby Ranch Estates – Approved 08/06/2001.

**BBOA-371 – Michael Gonker & Rebecca L. Holloway** – Request for Special Exception to allow a 1,900 square foot detached garage for property at 13108 E. 201<sup>st</sup> St. S. in Bixby Ranch Estates – Approved 09/04/2001.

**BBOA-394 – Larry & Tammi McBurnett** – Request for Variance to allow a 30' X 50' (1,500 square foot) metal garage and storage building for property at 13821 E. 203<sup>rd</sup> St. S. in Bixby Ranch Estates – Approved 11/04/2002.

**BBOA-422 – Alan R. Harris** – Request for Variance to allow a 1,596 square foot detached garage for property at 13118 E. 205<sup>th</sup> St. S. – Approved 06/07/2004.

**BBOA-462 – Wes Jones** – Request for Variance to allow a 1,500 square foot accessory building for property at 13262 E. 205<sup>th</sup> St. S. – Approved by BOA 11/05/2007.

**BBOA-465 – Jeff Seager** – Request for Variance to allow a 30' X 40' (1,200 square foot) accessory building for property at 14015 E. 205<sup>th</sup> St. S. – Approved by BOA 11/05/2007 for 30' X 50' (1500 sq. ft.) building size.

**BBOA-475 – Jeff Seager** – Request for Variance from Zoning Code Sections 11-7B-3.1.b and 11-8-8.B.5 to allow a 30' X 50' (1500 sq. ft.) accessory building, previously approved as to size per BBOA-465, to be constructed in the side yard for property at 14015 E. 205<sup>th</sup> St. S. – Approved by BOA 05/05/2008.

**BACKGROUND INFORMATION:**

**ANALYSIS:**

**Property Conditions.** The subject property is a large vacant lot with heavy tree cover, and contains a small drainageway which flows in an easterly direction through the property. Per the submitted survey, there is a small wood shed in the approximate area the new accessory building would be located. Per a site inspection on Friday, June 17, 2008 (during the Public Notice sign posting), Staff observed the concrete foundation has been poured in the location the proposed accessory building would be located. It is evident the Applicant has poured the foundation at his own risk, recognizing the Variances required to permit the building.

**Tests and Standard for Granting Variance.** Oklahoma State Statutes Title 11 Section 44.107 and Bixby Zoning Code Section 11-4-8.A and .C together provide the following generalized tests and standards for the granting of Variance:

- Unnecessary Hardship.
- Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances.
- Finding of No Substantial Detriment or Impairment.
- Variance would be Minimum Necessary.

Analysis and Staff Recommendation for Variance to Allow Garage Accessory Structure as Principal Use. An accessory structure is defined as:

“ACCESSORY USES OR STRUCTURES: A use or structure on the same lot with, and of a nature customarily incidental and subordinate to, the principal use or structure.”

To be an accessory structure, it must be associated with a principal structure on the same lot. In Staff's estimation, the Zoning Code was written with the intent to disallow accessory structures prior to the construction and occupancy of principal uses for several reasons, the most important of which would be:

1. Accessory buildings, especially when large in size and/or owned and operated by persons living elsewhere from the premises, have the potential to be used for non-residential purposes (e.g. woodworking shop, automotive repair, metal fabrication, construction contracting storage, etc.), which may become an annoyance to the neighborhood.
2. Accessory buildings may be occupied as a dwelling, when the structures are customarily not built in accordance with building code requirements to allow for residential occupancy. Use as a substandard dwelling unit, in addition to being relatively unsafe, may become an annoyance to the neighborhood.

The principal problem presented with accessory buildings constructed prior to principal dwellings revolve around their use, or potential for misuse. If it can be demonstrated that the use of the accessory building would not be substantially detrimental to the neighborhood or public good, the principal problem would be rendered moot.

The Applicant has expressed interest in constructing the accessory building first, stating, “We plan to use the storage building to protect a tractor, pickup, Flatbed trailer, horse trailer, and tools while waiting for construction on the primary residence to begin. Upon completion of the primary residence, the buildings use for vehicle storage and protection will continue and horse stalls may be added.” Based upon this statement, it is clear that the building's use, at this point in time, is intended for domestic vehicle and tool storage, and not a commercial operations base or residential quarters.

Based on the submitted building permit information, the building will not have plumbing (water or sewer), but will likely have electric service. Staff did not notice plumbing fixtures in the concrete slab when visiting the site on Friday, June 27, 2008. These conditions would not lend themselves to future misuse of the building.

If the Board finds that the arguments presented above, in the application, and others that the Applicant may provide during public hearing and consideration of this case at the meeting, substantially meet the Variance tests and standards provided in State Statutes and the Bixby Zoning Code for this Variance, based on the precedent set with a similar case (BBOA-471), Staff would recommend Approval of this Variance with the following Conditions of Approval:

1. Variance approval shall expire and be automatically vacated upon certain conditions, such as the sooner of: Two (2) years (or another relatively small number of years as determined appropriate and reasonable by the Board and Applicant) from issuance of a building permit for the accessory structure, or completion of construction and issuance of a Certificate of Occupancy for the principal dwelling, at which point it will become a conforming accessory structure as to use.
2. Variance approval shall expire and be automatically vacated if the structure is maintained or used as a dwelling unit, permanently or temporarily, or maintained or used for non-residential purposes, other than as a temporary staging area used exclusively for and during the period of construction of the principal dwelling.
3. If either of the above conditions is violated, the City of Bixby, at the direction of the City Council, may require the vacation of use of the structure or its demolition, or other such remedies at law as deemed necessary and appropriate.

Analysis and Staff Recommendation on the Variance to Exceed 750 Square Feet. On November 05, 2007, the Board of Adjustment approved BBOA-462 and BBOA-465, both concerning large accessory buildings in Bixby Ranch Estates, finding that the tests and standards for granting Variance were met in those applications and, more specifically, that the size of those lots, at approximately five (5) and nine (9) acres, respectively, were circumstances unique and different than that of more standard ‘city lots’ in the RE district, and that strict application of the 750 square foot maximum size restriction would cause an unnecessary hardship, as they would not be permitted adequately-sized accessory buildings. During the same meeting, the Board indicated agreement with Staff's recommendation to direct the matter be reported to the City Council for possible direction to proceed with an amendment to the Zoning Code to allow for larger accessory buildings on larger lots or in larger lot zoning districts. This reporting is pending along with other possible amendments to the Zoning Code.

Using the same arguments for the justification of Variance, as found adequate in the cases of BBOA-462 and BBOA-465 for allowing larger accessory structures on larger lots, the subject property would appear to qualify for a somewhat larger accessory building.

If the Board finds that the arguments presented above, based on the decisions in the cases of BBOA-462 and BBOA-465, or others as presented in the application or those that the Applicant may provide during public hearing and consideration of this case at the meeting, substantially meet the Variance tests and standards provided in State Statutes and the Bixby Zoning Code for this Variance, Staff would recommend Approval.

Analysis and Staff Recommendation for Variance to Allow Accessory Building in Front Yard. The accessory building is proposed to be located in the front yard, rather than the rear yard (all that part of the lot behind the rear line of the dwelling). Zoning Code Section 11-7B-3.B.1.b provides:

*“A detached accessory building shall not be located in the front or side yard, or encroach upon a minimum building setback line, but this limitation shall not apply to carports, provided the minimum required front yard or side yard or setback line is observed.”* (emphasis added).

Additionally, Zoning Code Section 11-8-8.B.5 provides:

*“In the RE and RS districts, detached accessory buildings may be located in a rear yard, provided the accessory building in the aggregate do not cover more than twenty percent (20%) of the area of the rear yard or exceed seven hundred fifty (750) square feet of floor area, whichever is less.”* (emphasis added).

Therefore, a Variance from these two (2) code provisions would be required to allow an accessory building in the front yard as proposed.

Of the several fundamental purposes for imposing restrictions on the placement of primary and accessory buildings, the primary reason is for the sake of consistency of design, mode of placement, and orientation of structures (aesthetics).

In furtherance of this Variance request, the Applicant has stated “As shown by my previous submitted site plan, my lot is shaped as a right triangle, with one of the 45° corners at the road access. Due to the terrain (sloped, with a creek crossing the property) the most acceptable location for the primary structure will be on the high-ground at the Northwest corner [sic]. The lower area near the city street will be used as pasture, with the shop/garage in this area. Though technically this area is consider the “Front Yard”, the actual dwelling will be out of [sight], at the top of the ridge.”

Staff notes that, due to the rural character of the subdivision and extremely large lots, standard placement of homes and accessory structures is not common in this subdivision.

The Board may wish to consider these arguments, or others as presented in the application or those that the Applicant may provide during public hearing and consideration of this case at the meeting, to identify with the Applicant how the requested Variance would be in accordance with each of the tests and standards provided in State Statutes and the Bixby Zoning Code.

NEW INFORMATION AS OF JULY 29, 2008:

This item was Continued from the July 07, 2008 regular meeting for the Applicant’s failure to attend the meeting and represent the application. Staff’s recommendation has not changed.

Vice/Acting Chair Darrell Mullins asked Erik Enyart about the elevation of the subject property. Mr. Enyart stated that GIS data supported the Applicant’s statement that the high ground was where the house would be built.

Vice/Acting Chair Darrell Mullins asked if the Applicant was present and wished to speak on the item. Applicant Shelly Redmond of 14238 E. 208<sup>th</sup> St. S. was present.

Dave Hill asked what certain lines were as represented on the submitted aerial map. Applicant Shelly Redmond stated that the lines represented a road where she and her husband have been driving.

Applicant Shelly Redmond described the need for the accessory building and Variances. Ms. Redmond stated that the accessory building would contain a 31’ travel trailer, and so needed to be 40’ wide, and would also hold a tractor, store hay, and equipment storage for the house. Ms. Redmond described the need for fill dirt to ensure proper drainage, and stated that 12 to 18 inches of fill dirt would be brought in. The Board members confirmed with Ms. Redmond that the fill and grading plans had been submitted to the City Engineer, who had approved the plans as not draining additional water onto neighboring property owners.

Vice/Acting Chair Darrell Mullins asked if there were any further questions or comments.

The Board members discussed with Erik Enyart the appropriateness of using one Motion to cover all of the individual Variances, or separate Motions, one (1) for each. Murray King clarified with Shelly Redmond that she was agreeable to the Conditions of Approval included in the Staff report and recommendations. Ms. Redmond indicated agreement.

After further discussion, Vice/Acting Chair Darrell Mullins asked to entertain a Motion. Dave Hill made a MOTION to APPROVE BBOA-478, including all of the individual Variance requests, with the Conditions of Approval as listed in the Staff report and recommendation. Lonnie Jeffries SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, King, Jefferies, & Hill  
NAY: None.  
ABSTAIN: None.  
MOTION CARRIED: 4:0:0

NEW BUSINESS

Erik Enyart addressed Vice/Acting Chair Darrell Mullins and noted that BBOA-487 had special circumstances, as stated in the Staff Report, and should not take much time at all, if the Applicant still wished to pursue the request. Mr. Enyart asked Keith Whitehouse, who was in attendance, if he wished to seek this “extra, double” approval, even though his interpretation of the PUD text indicated that a Special Exception was not in fact required for the auto sales business. Mr. Whitehouse indicated he wished to pursue the Special Exception. Mr. Enyart recommended to Mr. Mullins that the agenda items be taken out of order and BBOA-487 be considered next.

Vice/Acting Chair Darrell Mullins declared that the agenda items would be taken out of order and BBOA-487 be considered at this time.

- 6. **BBOA-487 – Keith Whitehouse for Cross Creek Office Warehouses, LLC.**  
Discussion and possible action to approve a Special Exception per Zoning Code Section 11-7D-2 Table 1 to allow a Use Unit 17 internet-based/indoor used automobile sales in the CS Commercial Shopping Center District with PUD 37  
Property located: Lot 2, Block 1, *Crosscreek*; 12818 S. Memorial Dr. Unit 111

Vice/Acting Chair Darrell Mullins introduced the item and called on Erik Enyart for the staff report and recommendation. Mr. Enyart summarized the staff report as follows:

**To:** *Bixby Board of Adjustment*  
**From:** *Erik Enyart, AICP, City Planner*  
**Date:** *Tuesday, July 29, 2008*  
**RE:** *Report and Recommendations for:  
BBOA-487 – Keith Whitehouse for Cross Creek Office Warehouses, LLC*

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LOCATION: – *12818 S. Memorial Dr. Unit 111*  
– *Lot 2, Block 1, Crosscreek*  
LOT SIZE: *3.3 acres, more or less*  
ZONING: *CS Commercial Shopping Center District + PUD 37*

REQUEST: Special Exception per Zoning Code Section 11-7D-2 Table 1 to allow a Use Unit 17 internet-based/indoor used automobile sales in the CS Commercial Shopping Center District with PUD 37.

SURROUNDING ZONING AND LAND USE:

North: AG; The Fry Creek Ditch channel, with agricultural land to the north of that.

South: RS-1 & RS-2; Residences and vacant residential lots in Clyde Miller Acreage, Village Ten Addition, and unplatted areas fronting along E. 129<sup>th</sup> St. S.

East: CS/PUD 37; Commercial Lot 1 in Crosscreek.

West: CS/PUD 37; Heavy commercial Lot 3 and 4 in Crosscreek.

COMPREHENSIVE PLAN: Corridor

PREVIOUS/RELATED CASES: (not a complete list)

PUD 37 – Crosscreek – Randall Pickard for Remy Co., Inc. – Request for rezoning from AG to CS and PUD for Crosscreek – Recommended for Approval by PC 03/21/2005 and Approved by City Council April 11, 2005 (Ord. 980 – number assigned to the approved blank ordinance in the year 2007 after discovery of the discrepancy).

Preliminary Plat of Crosscreek – Request for Preliminary Plat approval for Crosscreek – Recommended for Approval by PC 06/20/2005 and Approved by City Council 06/25/2005.

Final Plat of Crosscreek – Request for Final Plat approval for Crosscreek – Recommended for Approval by PC 11/21/2005 and Approved by City Council 11/28/2005.

AC-06-04-01 – Request for Architectural Committee [Site Plan and building plans] approval for Phase 1, consisting of buildings 1 through 5, inclusive, of Crosscreek – Believed to have been approved by AC April 17, 2006 (Minutes not found in case file).

RELEVANT AREA CASE HISTORY:

BBOA-453 – W.S. Atherton – Request for Special Exception to allow a Use Unit 17 indoors sales of used automobiles in the CS Commercial Shopping Center District with PUD 37 for the land platted as Crosscreek, and specifically, 12804 S. Memorial Dr. Unit # 109 – Approved by BOA 05/07/2007 on the condition that sales be indoors with no storage of automobiles outside of the building.

BACKGROUND INFORMATION:

ANALYSIS:

The subject property is Lot 2, Block 1, Crosscreek, and the unit number concerned is # 111.

PUD 37 was approved in 2005, and the subject property is in the equivalent of a second Development Area, but named “Lot 2.” The Development Standards for Lot 2, under Permitted Uses, along with other specified uses, provides the following: “Mini-storage and inside sales without outside display; all other uses in Use Unit 17 expressly are prohibited.”

Staff Recommendation. Based upon this discovery, Staff believes that the requested Special Exception is not required, as the use is already authorized by the PUD. However, if the Applicant should wish to pursue the application anyway (such as was done for BBOA-453), recognizing this fact, Staff would recommend Approval.

Erik Enyart stated that he was not aware that the PUD specifically allowed Use Unit 17 indoor sales of automobiles until, while researching the case, he read the Development Standards for Lot 2 and found it buried in the text. Mr. Enyart stated that he had believed a Special Exception would be required, apparently also as the previous City Planner did when the first similar case was requested and approved in May of 2007. Mr. Enyart stated that, since the PUD already allowed the requested use, he recommended Approval of the Special Exception.

Vice/Acting Chair Darrell Mullins asked to entertain a Motion. Murray King made a MOTION to APPROVE BBOA-487. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, King, Jefferies, & Hill  
NAY: None.  
ABSTAIN: None.  
MOTION CARRIED: 4:0:0

Murray King addressed Vice/Acting Chair Darrell Mullins and noted that the Applicant for BBOA-485 and BBOA-486 was present, and recommended to Mr. Mullins that the agenda items be taken out of order and these two (2) cases be considered next.

Vice/Acting Chair Darrell Mullins declared that the agenda items would be taken out of order and BBOA-485 and BBOA-486 would be considered at this time.

4. **BBOA-485 – Phillip Faubert.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-7D-2 Table 1 to allow a Use Unit 6 single-family dwelling and customary accessory structures in the CG General Commercial District.  
Property Located: 15802 S. Sheridan Rd.
  
5. **BBOA-486 – Phillip Faubert.** Discussion and possible action to approve a Variance from certain bulk and area requirements of Zoning Code Section 11-7D-4 Table 2, including, but not necessarily limited to: The setback from an abutting R Residential District and the 100-foot minimum street frontage requirement, to allow a Use Unit 6 single-family dwelling and customary accessory structures in the CG General Commercial District.  
Property Located: 15802 S. Sheridan Rd.

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Vice/Acting Chair Darrell Mullins introduced the item and called on Erik Enyart for the staff report and recommendation. Mr. Enyart summarized the staff report as follows:

**To:** *Bixby Board of Adjustment*  
**From:** *Erik Enyart, AICP, City Planner*  
**Date:** *Tuesday, July 29, 2008*  
**RE:** *Report and Recommendations for:  
BBOA-485 & BBOA-486 – Phillip Faubert*

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LOCATION: – 15802 S. Sheridan Rd.  
– Part of the E/2 SE/4 Section 22, T17N, R13E  
LOT SIZE: 2.7 acres, more or less  
ZONING: CG General Commercial District + RE Residential Estate District  
REQUEST: **BBOA-485:** *Special Exception per Zoning Code Section 11-7D-2 Table 1 to allow a Use Unit 6 single-family dwelling and customary accessory structures in the CG General Commercial District, and*  
**BBOA-486:** *Variance from certain bulk and area requirements of Zoning Code Section 11-7D-4 Table 2, including, but not necessarily limited to: The setback from an abutting R Residential District and the 100-foot minimum street frontage requirement, to allow a Use Unit 6 single-family dwelling and customary accessory structures in the CG General Commercial District.*

SURROUNDING ZONING AND LAND USE: RE to the north and west, CG to the east and south, and some RM-3 further to the south; Agricultural land belonging to W. S. & Delores Ann Atherton.

COMPREHENSIVE PLAN: Medium Intensity + Commercial Area.

PREVIOUS/RELATED CASES:

BZ-181 – W.S. Atherton – Request for rezoning from AG & RS-3 to CG, RM-3, and RE for approximately 240 acres (including subject property) for a future (but never built) “Atherton Farms Equestrian Estates” residential subdivision – Approved by City Council 06/23/1987 (Ord. 562).

BBOA-190 – W.S. Atherton – Request for “Use Variance” to allow the keeping of horses on individual lots as an accessory use for approximately 240 acres (including subject property) for a future (but never built) “Atherton Farms Equestrian Estates” residential subdivision – Approved by BOA 07/13/1987.

PUD 20 – Atherton Farms Equestrian Estates – Phillip Faubert – Request for rezoning from AG & RS-3 to CG, RM-3, and RE for approximately 240 acres (including subject property) for a future (but never built) “Atherton Farms Equestrian Estates” residential subdivision – Recommended for Approval by PC 01/20/1998. However, this case was evidently never presented to the City Council, as it did not appear on any agenda from January 26, 1998 to April 27, 1998, no Ordinance was found relating to it, and there are no notes in the case file suggesting it ever went to City Council. Further, PUD 20 does not exist on the official Zoning Map. An undated application signed by Phillip Faubert from circa March, 2001 was found in the case file requesting to “rescind PUD 20,” but no records or notes were found to determine the eventual disposition of this request, if any.

BZ-238 – W.S. Atherton – Request for rezoning from AG to RE for approximately 10 acres (may include part of subject property) for part of a future (but never built) “Atherton Farms Equestrian Estates” residential subdivision – Approved by City Council 02/23/1998 (Ord. 768).

BL-228 – Phillip Faubert – Request for Lot-Split to separate subject property from balance of 240 acres – Approved by PC 03/16/1998 and by City Council 03/23/1998.

RELEVANT AREA CASE HISTORY:

BACKGROUND INFORMATION:

Staff received a building permit application on June 16, 2008, requesting to construct a garage in the front yard of the subject property.

According to the Zoning map, the principal part of the subject property, containing the existing house, is zoned CG General Commercial District. The CG district allows a Use Unit 6 single-family dwelling only by Special Exception or PUD. According to research of Zoning case records, there has been one (1) Board of Adjustment case in this Section of land, which was BBOA-190 – W.S. Atherton, which requested “Use Variance” approval to allow the keeping horses on individual lots as an accessory use, Approved in 1987. Therefore, the subject property was never approved for a Special Exception for the Use Unit 6 house.

The zoning of the original Atherton acreage (of which the subject property is a part) was approved for CG, RM-3, and RE zoning per BZ-181 in 1987 (Ordinance # 562). PUD 20 was requested for the Atherton acreage, and was recommended for approval by the Planning Commission in January of 1998. However, this case was evidently never presented to the City Council, as it did not appear on any agenda from January 26, 1998 to April 27, 1998, no Ordinance was found relating to it, and there are no notes in the case file suggesting it ever went to City Council. An undated application signed by Phillip Faubert from circa March, 2001 was found in the case file requesting to “rescind PUD 20,” but no notes were found to determine the eventual disposition of this request, if any. Further, PUD 20 does not appear on the Zoning Map.

Tulsa County Assessor’s parcel data states that the house on the subject property was constructed in 2001 (but Building Permit # 6497 dated 5-6-98 indicates the house was actually constructed at that time). Staff is not certain how this Zoning issue was not discovered and dealt with then, but believes it may have been a map interpretation error which wrongly assumed that the house would be in the RE-zoned part, which GIS aerial and parcel data now demonstrates is not the case. This theory is supported by the “RE” designation on Building Permit # 6497 dated 5-6-98.

The house is currently not conforming to the CG district, as it does not have the Special Exception required. The nonconforming use provisions of the Zoning Code prevent the alteration of such use, unless it lessens the nonconformity. The provisions restrict the increase of intensity or further

development in furtherance of the nonconforming use. Approval of the building permit is thus not allowed by the Zoning Code, unless approved for Special Exception.

This Special Exception application requests approval for a Use Unit 6 single-family dwelling and accessory structures in the CG district. If/when approved, the garage would be allowed as to use, for that part which would be in the CG district.

Secondly, the garage is proposed to be located in the front yard. The Zoning Code restricts accessory buildings to the rear yard. Additionally, the placement of the garage would not meet the 30' setback, for a 25' high structure, from the RE district on the lot (Zoning Code Section 11-7D-4 Table 2), and the nonconforming status of the lot (no street frontage) and potentially other bulk and area nonconformities will require a Variance from any and all bulk and area standards which the lot and structure would not meet. The Applicant has also requested such a Variance.

The public notice for the BBOA-465 Variance describes the primary thrust of the requested Variance, but is not written in a manner which covers the individual Variance requests 100%. The parts that do not appear to be 100% covered pertain to the accessory structure's possible incidental location in the RE district, which may not even be the case. Staff believes that the notice substantially covers the true scope of the Variance, with the wording "certain bulk and area standards... including, but not necessarily limited to," and that the Public Notice requirement is not compromised by certain extra included details and immaterial nuances. All of the Variances are from bulk and area standards.

BBOA-485 ANALYSIS:

Surrounding Zoning and Land Use Compatibility. The surrounding zoning is primarily RE to the north and west, CG to the east and south, and some RM-3 further to the south. All of the surrounding land is agriculturally-used and belongs to W. S. & Delores Ann Atherton. The subject property and the Atherton acreage of approximately 240 acres was planned to be developed as the "Atherton Farms Equestrian Estates" residential subdivision in the late 1990s, but it never developed. A singular paved street was constructed, along with (apparently) certain other streets which appear to have had base materials applied but were not finished, intended to be a part of the development, and the entrance to the street at its intersection with Sheridan Road has a development entrance gate, landscaping, and sign bearing the name "Atherton Farms Equestrian Estates." The singular street now serves as the private drive to the subject property and the Atherton agricultural acreage, and is contained within easement in favor of the subject property owner.

The house has been in existence in situ since approximately 1998 (per the building permit and information in the Lot-Split case report suggesting the existing house) with no known complaints, and so the existing house has apparently coexisted harmoniously with the surrounding agricultural acreage for the past approximately 10 years. Absent a PUD or otherwise known development plan for the surrounding acreage, it must be presumed that the house and accessory structures are and would be compatible with surrounding existing and future land uses, or otherwise the development of the surrounding land uses will be made, through the development review process, to be maximally compatible with the existing house and accessory structures on the subject property.

Staff Recommendation. Recognizing that the Zoning Code contemplates the Use Unit 6 single family dwelling and customary accessory structures in the CG district, and provides for its approval, and for all the other reasons outlined above, Staff believes that the proposed facilities would be in harmony with the spirit and intent of the Zoning Code and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.

Staff recommends Approval of BBOA-485.

BBOA-486 ANALYSIS:

Tests and Standard for Granting Variance. Oklahoma State Statutes Title 11 Section 44.107 and Bixby Zoning Code Section 11-4-8.A and .C together provide the following generalized tests and standards for the granting of Variance:

- Unnecessary Hardship.
- Peculiarity, Extraordinary, or Exceptional Conditions or Circumstances.
- Finding of No Substantial Detriment or Impairment.
- Variance would be Minimum Necessary.

Nature of Variance. The Applicant applied for a building permit for an accessory building. Staff observed that the accessory building would conflict with several bulk and area standards in the existing CG and RE districts, including, but not necessarily limited to:

1. *The accessory structure's setback from an abutting R Residential District (for that part which would be located in the CG district), and, quite likely, the existing dwelling structure's setback from the RE district,*
2. *The 100-foot minimum street frontage requirement in the CG district for the dwelling (property has no street frontage),*
3. *The accessory structure's proposed location in the front yard (in front of the westerly-facing house, and between it and the access street which is used as a driveway), rather than the rear yard.*
4. *The accessory structure is proposed to be of a rectangular configuration with dimensions 35' X 32' (1,120 square feet). This would exceed the 750 square foot maximum size for an accessory structure in the RE and RS districts. Part of the accessory structure may be located in the RE district.*
5. *Any other bulk and area standards which are not met in the subject property for it to support the existing residential dwelling and proposed accessory structure in the respective parts of the current CG and RE districts in which the subject property is located. This would 'cure' the subject property of any existing deficiencies which cause the lot and its structures to be nonconforming to the Zoning Code.*

*Analysis and Staff Recommendation for Variance for Accessory Structure's Setback From an Abutting R Residential District, The 100-Foot Minimum Street Frontage Requirement, and Any Other Bulk and Area Standards Which Are Not Met in the Subject Property.* *This Variance would approve a Variance from any and all bulk and area standards which are not met in the subject property for it to support the existing residential dwelling and proposed accessory structure in the respective parts of the current CG and RE districts in which the subject property is located. This would 'cure' the subject property of any existing deficiencies which cause the lot and its structures to be nonconforming to the Zoning Code, and provide for the accessory structure to be constructed on the subject property. Staff would recommend this Variance be recognized as satisfying State Statutes' and the Bixby Zoning Code's tests and standards for the granting of Variance for the following reasons:*

- *The subject property's situation of 'straddling' both the CG and RE districts, the City's evident misinterpretation of the Zoning District boundary lines when the Lot-Split and building permit were approved, the Zoning and Lot-Split history which resulted in the subject property, and especially the fact that it was intended to be a part of the "Atherton Farms Equestrian Estates" residential subdivision, which never was fully developed, and the subject property's irregular configuration and situation of having no street frontage and thus potentially ambiguous "front" and "rear yards," should all and together be considered Peculiar, Extraordinary, or Exceptional Conditions or Circumstances, unique to the subject property, and not generally shared by other properties in CG and RE districts, or combinations thereof.*
- *Failure to secure approval of this Variance would leave the subject property illegally nonconforming and the principal structure potentially technically subject to abatement, and would prevent the subject property from being permitted an accessory structure, which is afforded all other residential properties in Bixby. These could be considered severe and Unnecessary Hardships.*
- *For the above reasons, and in consideration of the underlying assumptions on which the bulk and area standards are based, which cannot logically be applied to the current situation, approval of the requested Variance would not cause substantial detriment to the public good or impair the purposes, spirit and intent of the Zoning Code or the Comprehensive Plan.*
- *These Variances should be considered the Minimum Necessary to Alleviate the Unnecessary Hardship, as the subject property exists in its present condition and configuration and the house exists in situ on the subject property, and neither can reasonably be made to change.*

*Analysis and Staff Recommendation for Variance to Allow Accessory Building in Front Yard.* *The accessory structure is proposed to be located in the front yard (in front of the westerly-facing house, and between it and the access street which is used as a driveway), rather than the rear yard. Based on aerial and Assessor's parcel GIS data, it appears that the proposed site of the accessory building will primarily be in the CG district. However, it is possible that part of the structure may be incidentally within the RE-zoned area of the subject property. In that case, Zoning Code Section 11-7B-3.B.1.b provides:*

“A detached accessory building shall not be located in the front or side yard, or encroach upon a minimum building setback line, but this limitation shall not apply to carports, provided the minimum required front yard or side yard or setback line is observed.” (emphasis added).

Additionally, Zoning Code Section 11-8-8.B.5 provides:

“In the RE and RS districts, detached accessory buildings may be located in a rear yard, provided the accessory building in the aggregate do not cover more than twenty percent (20%) of the area of the rear yard or exceed seven hundred fifty (750) square feet of floor area, whichever is less.” (emphasis added).

Therefore, a Variance from these two (2) code provisions would be required to allow an accessory building in the front yard as proposed.

Of the several fundamental purposes for imposing restrictions on the placement of primary and accessory buildings, the primary reason is for the sake of consistency of design, mode of placement, and orientation of structures (aesthetics).

The surrounding land is agricultural, and there are no other dwellings within several hundred feet surrounding the subject property (900' reported by the Applicant, but probably more, unless the agricultural-looking building to the northeast on the Atherton acreage is used as a dwelling). As stated elsewhere in this report, absent a PUD or otherwise known development plan for the surrounding acreage, it must be presumed that the house and accessory structures are and would be compatible with surrounding existing and future land uses, or otherwise the development of the surrounding land uses will be made, through the development review process, to be maximally compatible with the existing house and accessory structures on the subject property.

Also, according to the Applicant's building permit application, the accessory building has been designed to be architecturally similar to the primary dwelling. These conditions should help remove any potential for detriment due to aesthetic considerations contemplated by the rear-yard-only restriction of the Zoning Code.

Finally, most, and possibly all of the accessory structure would appear to be in the CG district. It is not likely that the 750 square foot maximum or rear-yard location restrictions in the RE and RS districts could be made to apply to a dwelling and its accessory structure(s) within the CG district, as evinced by Zoning Code Sections 11-9-0.C and 11-7D-5.B.

For these reasons, Staff believes that the approval of the requested Variance would not cause substantial detriment to the public good or impair the purposes, spirit and intent of the Zoning Code or the Comprehensive Plan.

As noted elsewhere in this report, by virtue of the combination of the following facts:

- The subject property's situation of 'straddling' both a CG and an RE district,
- The City's apparent misinterpretation of the Zoning District boundary lines when the Lot-Split and building permit were approved,
- The Zoning and Lot-Split history which resulted in the subject property, and especially the fact that it was intended to be a part of the "Atherton Farms Equestrian Estates" residential subdivision, which never was fully developed, and
- The subject property's irregular configuration and situation of having no street frontage and thus potentially ambiguous "front" and "rear yards,"

The subject property should be deemed to have Peculiar, Extraordinary, or Exceptional Conditions or Circumstances, unique to the subject property, and not generally shared by other properties in CG and RE districts, or combinations thereof.

However, it does not follow, and Staff could not conceive how the above facts give rise to any potential hardship caused if the accessory structure was required to be located in the rear yard. The arguments presented in the application do not appear to materially address this test and standard. If the Board is amenable to this Variance, it should identify with the Applicant how the requested Variance would be in accordance with the Unnecessary Hardship test and standard provided in State Statutes and the Bixby Zoning Code.

Analysis and Staff Recommendation on the Variance to Exceed 750 Square Feet. On November 05, 2007, the Board of Adjustment approved BBOA-462 and BBOA-465, both concerning large accessory buildings in Bixby Ranch Estates, finding that the tests and standards for granting Variance were met in those applications and, more specifically, that the size of those lots, at approximately five (5) and nine (9) acres, respectively, were circumstances unique and different than that of more standard 'city

lots' in the RE district, and that strict application of the 750 square foot maximum size restriction would cause an unnecessary hardship, as they would not be permitted adequately-sized accessory buildings. During the same meeting, the Board indicated agreement with Staff's recommendation to direct the matter be reported to the City Council for possible direction to proceed with an amendment to the Zoning Code to allow for larger accessory buildings on larger lots or in larger lot zoning districts. This reporting is pending along with other possible amendments to the Zoning Code.

The subject property contains 2.7 acres. Based on the 1998 building permit for the existing principal dwelling and information contained in the various files composing the Zoning and Lot-Split history of the subject property, it is evident that the subject property was believed to have been in an RE district when the house was permitted and constructed. Indeed, it is now evident that the northwestern fringe of the subject property (north and west of the dwelling) is within an RE district. The RE district requires a minimum lot area of 24,000 square feet (0.55 acres). The subject property is almost five (5) times larger than the minimum lot size in the RE district, which may be considered Peculiar, Extraordinary, or Exceptional Conditions or Circumstances unique to the subject property and not generally shared with other lots in the RE district.

Additionally using the same arguments for the justification of Variance, as found adequate in the cases of BBOA-462 and BBOA-465 for allowing larger accessory structures on larger lots, the subject property would appear to qualify for a somewhat larger accessory building.

Finally, most, and possibly all of the accessory structure would appear to be in the CG district. It is not likely that the 750 square foot maximum or rear-yard location restrictions in the RE and RS districts could be made to apply to a dwelling and its accessory structure(s) within the CG district, as evinced by Zoning Code Sections 11-9-0.C and 11-7D-5.B.

If the Board finds that the arguments presented above, based on the decisions in the cases of BBOA-462 and BBOA-465, or others as presented in the application or those that the Applicant may provide during public hearing and consideration of this case at the meeting, substantially meet the Variance tests and standards provided in State Statutes and the Bixby Zoning Code for this Variance, Staff would recommend Approval of this Variance element.

The Board should determine whether the requested Variance to allow a 35' X 32' (1,120 square feet) accessory building would be the minimum necessary to alleviate the unnecessary hardship. Consideration of the relative size of the subject property and of agricultural structures on the adjoining properties may be helpful for inclusion in the determination.

Staff Recommendation. If the Board agrees with Staff that the arguments presented above, or others as presented in the application or those that the Applicant may provide during public hearing and consideration of this case at the meeting, substantially meet the Variance tests and standards provided in State Statutes and the Bixby Zoning Code for this Variance, Staff would recommend Approval. Staff notes that the exceptions to this recommendation are: (1) Determining Unnecessary Hardship for the front-yard accessory building location Variance, and (2) Determining the Minimum Necessary for the 750 square foot Variance, both as described above. Staff cannot conceive of viable arguments to satisfy these two (2) determinations, but would not rule out the possibility that such could be discovered and found adequate during public hearing and consideration of this case at the meeting.

Vice/Acting Chair Darrell Mullins asked if the Applicant was present and wished to speak on the item. Applicant Phil Faubert was present and noted that he was part owner in the Atherton acreage property. Mr. Faubert stated that the house took approximately two (2) years to construct, and so the 1998 date on the building permit application was probably correct.

Vice/Acting Chair Darrell Mullins asked if there were any further questions or comments. There were none.

Vice/Acting Chair Darrell Mullins asked to entertain a Motion on BBOA-485. Lonnie Jeffries made a MOTION to APPROVE BBOA-485. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, King, Jefferies, & Hill  
NAY: None.  
ABSTAIN: None.  
MOTION CARRIED: 4:0:0

Applicant Phil Faubert stated that the Atherton acreage was not a residential development, and was a horse farm for him and his family.

After further discussion, Vice/Acting Chair Darrell Mullins asked if there were any further questions or comments. There were none.

Vice/Acting Chair Darrell Mullins asked to entertain a Motion on BBOA-486. Dave Hill made a MOTION to APPROVE BBOA-486. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, King, Jefferies, & Hill  
NAY: None.  
ABSTAIN: None.  
MOTION CARRIED: 4:0:0

3. **BBOA-484 – Norman T. Pruitt.** Discussion and possible action to approve a Special Exception per Zoning Code Section 11-7D-2 Table 1 to allow a Use Unit 15 bottled gas/propane, grill, and outdoor oven sales and storage in the CS Commercial Shopping Center District.  
Property located: 15630 S. Memorial Dr.
- 

Vice/Acting Chair Darrell Mullins introduced the item and called on Erik Enyart for the staff report and recommendation. Mr. Enyart stated that the legal description used in the newspaper publication was incorrect, and so the City would have to readvertise the case for the September regular meeting at the City's expense.

Vice/Acting Chair Darrell Mullins asked if there were any further questions or comments. There being none, Dave Hill made a MOTION to CONTINUE BBOA-484 to the September regular meeting. Murray King SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, King, Jefferies, & Hill  
NAY: None.  
ABSTAIN: None.  
MOTION CARRIED: 4:0:0

ADJOURNMENT

There being no further business to discuss, Murray King made a MOTION to ADJOURN. Dave Hill SECONDED the Motion. Roll was called:

ROLL CALL:

AYE: Mullins, King, Jefferies, & Hill  
NAY: None.  
ABSTAIN: None.  
MOTION CARRIED: 4:0:0

Meeting adjourned at 7:38 PM.

APPROVED BY:

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Planner/Recording Secretary